COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 5 of 2002

New India Assurance Company Ltd. ….. **Appellant.**

Versus

Kamlesh Kumar and another. ….. **Respondents.**

Mr. D.K. Sharma, learned counsel for the appellant.
Mr. Gopal Narain, Advocate, learned counsel for respondents no. 1.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(in short the Act)*** against the judgment and Award, dated 4-1-2002, passed in Case No. W.C.A. 24 of 2001, Kamlesh Kumar Vs. Sri A.B.Shahi and another, by the Workmen's Compensation Commissioner & Dy. Labour Commissioner Kumaon Region, Haldwani ***hereinafter referred to as the Commissioner),*** whereby the learned Commissioner has awarded a sum of Rs. 2,62,164/- along with interest @ 12% per annum from 15.3.2001 to 15.10.2001, amounting to Rs. 18,347/- in favour of the claimant-respondent no. 1 with certain directions, as against the Opposite Party No. 2-appellant. Aggrieved the Insurance Company-appellant has come up in appeal with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the judgment and award is not based on evidence on record and is illegal.

Brief facts, giving rise to the present appeal, are that the claimant-respondent Kamlesh Kumar moved a claim petition before the learned Commissioner alleging therein that he was employed as driver the employment of Opposite Party No.1-

respondent no.2; that on 15.3.2001, he was coming from Tata Sumo from Hardwar to Haldwani. When he reach 30 Kms. Ahead from Hardwar near Chiriyapur Jungle, all of a sudden, a cow came in front of his vehicle and, in order to save the cow, the vehicle turning beyond his control dashed against a tree, thereby he sustained injuries on various part of his body and right foot of the claimant had become permanently disabled. The report of the accident was lodged on 15.3.2001 with Police Station Hardwar. The right foot/leg of the injured-claimant was operated upon and rod was placed inside the foot/leg with the result the claimant is not unable to drive the vehicle. The injured was aged 24 years at the time of accident and was getting Rs. 3500/- per month. It is also alleged that after the accident, no compensation was paid to him by the owner of the vehicle and the Insurance Company. The petition has been filed for the amount of Rs. 3,25,000/- as compensation along with interest @ 12% per annum. The claim petition has been supported by an affidavit.

The Opposite Party No.1, owner of the vehicle, (respondent no.2) was sufficiently served; but he did not put in appearance to contest the case. Therefore, the case was ordered to proceed ex-parte against him.

The opposite party no.2-appellant has contested the proceedings by filing its written statement. It has denied the allegations made in the claim petition. In the additional pleas the Insurance Company has asserted that the insured has to prove the relevant provisions of law and insurer does not become automatically liable to pay compensation; that the burden lay upon the claimant to prove that he had acted prudently and had taken all precaution while driving the vehicle. Plea of holding of valid driving licence has also been raised. It has also been stated that compliance of Section 64(B) of the Insurance Act has to be

established and lastly it has been pleaded that the claimant has to prove his disability supported by Medical Certificate to that effect.

The learned commissioner recorded the evidence of the claimant on 18.10.2001 and has corroborated the allegations made in the claim petition on all material points. He has also stated on oath that he was admitted in the S.S.Jina Government Hospital Haldwani by the owner of the vehicle and he remained hospitalized from 17.3.2001 to 9.4.2001 and his leg was operated upon and iron rod was inserted inside the leg. He has also stated that due to injuries sustained by him his right leg is shortened and he has become unable to drive any vehicle and now, due to the injuries, he has become jobless. He has also stated that he has been issued 40% disability certificate on 16.10,2001 and the same has been produced before the learned Commissioner. This witness has also proved his driving licence as Ext. W.2. According to him other necessary documents are on record. This witness was cross-examined at length on behalf of the Insurance Company.

The learned Commissioner after hearing both the contesting parties and considering the material before him, the learned commissioner came to the conclusion that the claimant-injured has been successful in proving the disability, diminishing of efficiency, etc. He also came to the conclusion that 40% permanent disability of leg is sufficient to hold that the claimant-respondent no.1 is now unfit for the work of driver and the learned Commissioner has held that the 40% disability of leg of a person makes him permanently disabled for the job of driving vehicles. Accordingly, taking into consideration the age of the claimant-respondent, and his income etc., the learned Commissioner has awarded compensation worth Rs. 2,62,164/-, as mentioned earlier. It has also been ordered that the opposite parties-appellant and respondent no.2 shall deposit the entire amount including the

amount of interest within one month, failing which recovery certificate shall be issued.

We have heard learned counsel for both the parties and have carefully gone through the entire material on record as well as the impugned judgment and award.

Having considered all the aspects of the case, we are not inclined to accept the contentions of the appellant raised in the memo of appeal. The permanent disability of leg to the extent of 40% which has been duly proved by the oral as well as documentary evidence on record, in our opinion is sufficient to hold that the claimant-appellant, who was aged 24 years at the time of accident, has no prospect to get a job of driving vehicles in future and of getting any skilled job. Taking into consideration all the facts and circumstances of the case from all the four corners, it can safely be held that the compensation awarded is just and proper. We are of the view that the judgment and award under appeal does not call for any interference and it does not suffer from any illegality or infirmity. The appeal deserves dismissal on merit.

Accordingly, the appeal is dismissed. The judgment and order, under appeal, is upheld. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

16-08-2004
RCP